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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES PORTER, BRYAN PEREZ, DRO  
ESRAEILI ESTEPANIAN, DENNIS  
ROMANEZ, ARTEM KUPRIIETS, NEIL  
KREUZER, WAFAY NADIR, AND  
KENNETH BROWN, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

TESLA, INC., a Delaware Corporation,

Defendant.

Case No. 4:23-cv-03878-YGR

**ADMINISTRATIVE MOTION TO  
CONSIDER WHETHER CASES  
SHOULD BE RELATED**

[Related case: *Irena Zaks and Gary Zaks v.  
Tesla, Inc.*, Northern District of California,  
Case No. 3:23-cv-05556-AGT]

Compl. Filed: August 2, 2023

Pursuant to Northern District Civil Local Rule 3-12 and 7-11, Defendant Tesla, Inc. (“Tesla”) submits this administrative motion to deem this action related to a later-filed action – captioned *Irena Zaks and Gary Zaks, on behalf of themselves and the general public v. Tesla, Inc. d/b/a in California as Tesla Motors, Inc. and Does 1 to 100*, 3:23-cv-05556-AGT (N.D. Cal.), removed from state court to the Northern District of California on October 27, 2023 (“the *Zaks* Action”). Attached as **Exhibit A** is a copy of the Complaint filed in the *Zaks* Action. Plaintiffs in the *Zaks* Action have indicated they do not oppose relation of the cases, but do not waive, and expressly preserve, any rights or arguments that the Court lacks jurisdiction over their case. Plaintiffs in the *Porter* and *Van Diest* Actions stated that they do not oppose this Motion, and counsel for plaintiffs in the *Corona* Action have acknowledged in the parties’ case management report that the *Zaks* Action is a related case.<sup>1</sup>

Under Local Rule 3-12(a), an “action is related to another when: (1) [t]he actions concern substantially the same parties, property, transaction or event; and (2) [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” *Id.* Both requirements are met here.

**First**, this case, the two other related actions (assigned to this Court), and the *Zaks* Action concern substantially similar parties, factual allegations, vehicles, and claims:<sup>2</sup>

- The Court has already found that two other similar actions are related within the meaning of Rule 3-12 – *Alejandro Corona et al. v. Tesla, Inc.*, Case No. 4:23-cv-03902-YGR (“*Corona* Action”) and *Samuel Van Diest et al. v. Tesla, Inc.*, Case No. 4:23-cv-4098-YGR (“*Van Diest* Action”). (ECF No. 27 (“Related Case Order”).) Each case is based on the same central theory of liability as the *Zaks* Action: that Tesla allegedly made inaccurate representations regarding its vehicles’ driving ranges;

<sup>1</sup> *Corona* Action, ECF No. 20, at 9 (“Related Cases”); *see also Van Diest* Action, ECF No. 24, at 13 (“Related Cases”); *Porter* Action, ECF No. 37, at 13 (“Related Cases”).

<sup>2</sup> By filing this motion, Tesla is not waiving any defenses to this action, the *Zaks* Action, or the *Corona* and *Van Diest* Actions, including that plaintiffs have not stated a valid claim, the claims are subject to arbitration, and any claims cannot be brought and are not suitable for resolution on behalf of a class.

- 1 • The *Corona* Action and the *Zaks* Action both assert UCL claims and seek public  
2 injunctive relief – an injunction on behalf of themselves and the general public. Dkt.  
3 No. 1 in the *Corona* Action (*Corona* Plaintiffs’ Complaint), ¶¶ 4, 18 and 31; Ex. A, ¶¶  
4 3, 6, 67-71, and 75;
- 5 • Tesla is the sole defendant in this case and the *Zaks* Action (as well as the *Corona* and  
6 *Van Diest* Actions), and each case is brought, in part, by California owners of Tesla  
7 vehicles. Dkt. No. 35 (Plaintiffs’ Amended Complaint), ¶¶ 12-14 (Plaintiffs Porter,  
8 Perez and Estepanian are California residents); Ex. A, ¶¶ 3-4 (plaintiffs are California  
9 residents);
- 10 • This action and the *Zaks* Action arise from the same set of alleged facts. Plaintiffs in  
11 both cases allege that they purchased Tesla vehicles between 2021 and 2023. Dkt. No.  
12 35 ¶¶ 12-19; Ex. A, ¶¶ 3-6. Plaintiffs in both cases allege that Tesla made inaccurate  
13 representations regarding the driving range of its vehicles as their core claim. *See* Dkt.  
14 No. 35 ¶¶ 1, 10, 126; Ex. A, ¶¶ 1, 58, 62, 65, 71. And Plaintiffs in both cases seek  
15 injunctive relief based on Tesla’s alleged practice of supposedly misrepresenting to  
16 consumers the mileage driving range of its electric vehicles. Dkt. No. 35 ¶ 228; Ex. A  
17 ¶¶ 1-2, 67-70;
- 18 • In both this action and the *Zaks* Action, Plaintiffs rely upon the same newspaper article  
19 regarding Tesla vehicle ranges, which was published shortly before these cases were  
20 filed. *See* Dkt. No. 35 ¶¶ 68-81, 86; Ex. A ¶¶ 13-15, 20, 27-28, 33, 36-37, 42-44, 50-  
21 51 (citing to same article); and
- 22 • Both cases assert consumer protection claims, including a claim under California’s  
23 Unfair Competition Law (“UCL”), and pursue relief under the UCL. *See* Dkt. No. 35  
24 ¶¶ 232-241 (UCL claim); Ex. A, ¶¶ 59-71 (UCL claim). The UCL claims also are  
25 asserted in the *Corona* Action and the *Van Diest* Action.

26 ***Second***, given the substantial overlap between these matters (and the related *Corona* and  
27 *Van Diest* Actions already transferred to this Court), both judicial economy and party resources  
28 would be best served by assignment to this Court. As this Court recognized through its prior

1 Related Case Order (ECF No. 27), it would be grossly inefficient and burdensome for two judges  
2 to separately evaluate and address similar legal issues arising out of plaintiffs' similar factual  
3 allegations against the same defendant. In addition, transfer to this Court will avoid the risk of  
4 potentially inconsistent rulings and results.

5 Accordingly, Tesla respectfully requests that the Court find that this Action and the *Zaks*  
6 Action are related cases and have them presided over by this Court.

7  
8 Dated: November 3, 2023

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11  
12 By /s/ David L. Schrader  
David L. Schrader

13 *Attorneys for Defendant Tesla, Inc.*  
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# **EXHIBIT A**

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**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF ALAMEDA**

IRENA ZAKS and GARY ZAKS, on behalf  
of members of the general public,

Plaintiffs,

vs.

TESLA, INC. d/b/a in California as TESLA  
MOTORS, INC. and Does 1 to 100,

Defendants.

Case No.

**COMPLAINT FOR:**

**PUBLIC INJUNCTIVE RELIEF  
PURSUANT TO CALIFORNIA BUSINESS  
AND PROFESSIONS CODE  
SECTION 17200, ET SEQ.**

1 Plaintiffs Irena Zaks and Gary Zaks (“Plaintiffs”), on behalf of members of the general  
2 public, bring this action under California law against Defendant Tesla, Inc. d/b/a Tesla Motors,  
3 Inc. (“Defendant” or “Tesla”), upon information and belief, except as to their own actions, the  
4 investigation of their counsel, and the facts that are a matter of public record, and alleges as  
5 follows:

## 6 INTRODUCTION

7 1. This action, brought pursuant to the California’s unfair business practices  
8 statutes, California Business and Professions Code Section 17200, *et seq.* (the “UCL”), seeks  
9 public injunctive relief only to protect members of the general public in California, including  
10 potential customers of Defendant, from the threat of future injury for unfair business practices  
11 resulting from Tesla’s unfair and deceptive marketing of its electric vehicles’ range.  
12 Specifically, Plaintiffs seek to compel Tesla to disclose to the public that, with respect to Tesla  
13 Model 3, S, Y and X (collectively the “Tesla Vehicles”): (1) Tesla’s advertised total mileage  
14 range for the Tesla Vehicles is based on charging the Vehicle to 100%, but Tesla discourages  
15 charging its vehicles to 100%; therefore, Tesla’s advertised mileage range for the Tesla Vehicles  
16 is misleading; (2) the range of the Tesla Vehicles can drop by up to 50% in cold weather,  
17 compared to advertised ranges; and (3) that the ranges of the Tesla Vehicles were not estimated  
18 based on U.S. Environmental Protection Agency (“EPA”) standardized formulae—despite  
19 Tesla advertising the range estimates as “EPA estimates”—but instead based on Tesla’s own  
20 proprietary software method and algorithms for calculating range, which allowed for a more  
21 aggressive estimate of total electric vehicle range.

22 2. As this action seeks public injunctive relief only, and Tesla’s arbitration  
23 agreement bars public injunctive relief in any forum, Tesla’s arbitration agreement is not  
24 enforceable as to this claim, and this action is not precluded by Tesla’s arbitration agreement  
25 pursuant to *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017).

## 26 PARTIES

27 3. Plaintiff Irena Zaks is, and at all times relevant hereto has been, an individual  
28 residing in Los Angeles, California. At all times relevant, Irena Zaks has owned a 2022 Tesla

1 Model S Long Range vehicle purchased from Tesla Motors, Inc. Irena Zaks lost money or  
2 property as a result of Tesla's misconduct as alleged herein in that she would not have  
3 purchased her vehicle or would have paid less for it, had Tesla not acted as alleged herein.  
4 Accordingly, Irena Zaks has standing to seek public injunctive relief.

5 4. Plaintiff Gary Zaks is, and at all times relevant hereto has been, an individual  
6 residing in Los Angeles. Gary Zaks is the husband of Plaintiff Irena Zaks, is the primary driver  
7 of the vehicle and uses the vehicle primarily for home and personal use, and has an ownership in  
8 the vehicle. Both Irena Zaks and Gary Zaks are financially responsible for the vehicle, which  
9 includes but is not limited to paying for the cost of operating the vehicle. Irena Zaks and Gary  
10 Zaks have both incurred an increase in the cost of operating the vehicle due to its reduced range.

11 5. The reduced range of the vehicle has impacted Plaintiffs' cost of operating the  
12 vehicle in various ways. Plaintiffs have had to charge the vehicle more frequently, leading to  
13 increased electricity costs over time. With its reduced range, Plaintiffs' vehicle has depreciated  
14 and will continue to depreciate in value faster than those that maintain a longer range. The  
15 vehicle's reduced range has also caused "range anxiety," where Plaintiffs are constantly  
16 concerned about running out of battery before reaching their destination. This has caused them  
17 to take longer routes to ensure they pass by charging stations or avoid certain trips altogether.  
18 These longer routes have caused increased monetary costs.

19 6. Gary Zaks complained directly to Tesla regarding the issues alleged herein. At  
20 all times relevant, Gary Zaks has owned a 2022 Tesla Model S Long Range vehicle purchased  
21 from Tesla Motors, Inc. Gary Zaks lost money or property as a result of Tesla's misconduct as  
22 alleged herein in that he would not have purchased his vehicle or would have paid less for it,  
23 had Tesla not acted as alleged herein. Accordingly, Gary Zaks has standing to seek public  
24 injunctive relief.

25 7. Defendant Tesla is a Delaware corporation, with its principal place of business in  
26 Austin, Texas. Tesla maintains manufacturing facilities in Fremont, California, where it  
27 produces the Tesla Model 3, S, Y and X. Tesla designs, manufactures, advertises, markets, and  
28 sells its electric vehicles, including the Tesla Vehicles, throughout the United States and



1 worldwide. At all relevant times hereto, Tesla has conducted business within the State of  
2 California.

### 3 JURISDICTION AND VENUE

4 8. This action is brought pursuant to the UCL. The remedies sought by Plaintiff  
5 exceed the minimal jurisdictional limits of the Superior Court and will be established according  
6 to proof at trial. This Court has jurisdiction over this action pursuant to the California  
7 Constitution, Article VI, section 10. The California statutes under which this action is brought  
8 do not specify any other basis for jurisdiction.

9 9. This Court has jurisdiction over Tesla because it sells the Tesla Vehicles in the  
10 State of California. Furthermore, Tesla has intentionally availed itself of the California market  
11 so as to render the exercise of jurisdiction over Tesla by the California courts consistent with  
12 traditional notions of fair play and substantial justice.

13 10. Plaintiffs' knowledge of the alleged unfair business practices means that  
14 Plaintiffs lack Article III standing for injunctive relief in federal court because they are already  
15 on notice of Tesla's unfair and deceptive conduct alleged herein.

16 11. Venue is proper in this County because California Code of Civil Procedure  
17 sections 395 and 395.5, and case law interpreting those sections, provide that if a foreign  
18 business fails to designate with the office of the California Secretary of State a principal place of  
19 business in California, it is subject to being sued in any county in the State that plaintiff desires.

20 12. On information and belief, Defendant is a foreign business entity, and has failed  
21 to designate a principal place of business in California with the office of the Secretary of State  
22 as of the date this Complaint was filed. Thus, Defendant has no right to any particular venue  
23 and Plaintiffs may file this complaint in any county in California. *See Hardin v. San Jose City*  
24 *Lines*, 103 Cal. App. 2d 688, 689 (1951); *see also Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12  
25 Cal. App. 3d 243, 246-247 (1970). Moreover, venue is proper in this County because  
26 Defendant maintains significant operations and transacts substantial business in Fremont, which  
27 is in this County, Defendant entered into transactions and received substantial profits from  
28 motor vehicle purchase agreements with persons, including Plaintiffs, in this County, and

1 because numerous members of the general public, whom this lawsuit is intended to protect, are  
2 located here.

### 3 **TESLA'S MISCONDUCT**

4 13. On July 27, 2023, Reuters published a Special Report entitled "Tesla Created  
5 Secret Team to Suppress Thousands of Driving Range Complaints." In the lead paragraph, Reuters  
6 asserted that "About a decade ago, Tesla rigged the dashboard readouts in its electric cars to  
7 provide 'rosy' projections of how far owners can drive before needing to recharge, a source told  
8 Reuters. The automaker last year became so inundated with driving-range complaints that it  
9 created a special team to cancel owners' service appointments."

10 14. The Reuters Special Report states that, according to Reuters' interviews with  
11 three automotive experts who have tested or studied the Tesla's vehicles, the Tesla Vehicles  
12 often fail to achieve their advertised range estimates and the projections provided by the cars'  
13 own equipment. Tesla hyped the range of its futuristic Tesla Vehicles, raising consumer  
14 expectations beyond what the cars can deliver.

15 15. The Reuters Special Report asserts that "Tesla years ago began exaggerating its  
16 vehicles' potential driving distance – by rigging their range-estimating software. The company  
17 decided about a decade ago, for marketing purposes, to write algorithms for its range meter that  
18 would show drivers "rosy" projections for the distance it could travel on a full battery,  
19 according to a person familiar with an early design of the software for its in-dash readouts.  
20 Then, when the battery fell below 50% of its maximum charge, the algorithm would show  
21 drivers more realistic projections for their remaining driving range, this person said. To prevent  
22 drivers from getting stranded as their predicted range started declining more quickly, Teslas  
23 were designed with a "safety buffer," allowing about 15 miles (24 km) of additional range even  
24 after the dash readout showed an empty battery, the source said." According to Reuters, the  
25 directive to present the optimistic range estimates came from Tesla Chief Executive Elon Musk,  
26 this person said. "Elon wanted to show good range numbers when fully charged," the person  
27 said, adding: "When you buy a car off the lot seeing 350-mile, 400-mile range, it makes you feel  
28

1 good.” Tesla’s intentional inflation of in-dash range-meter projections and the creation of its  
2 range-complaints diversion team have not been previously reported.

3 16. At the time Tesla programmed in the rosy range projections, it was selling only  
4 two models: the two-door Roadster, its first vehicle, which was later discontinued; and the  
5 Model S, a luxury sport sedan launched in 2012. It now sells four models: two cars, the 3 and S;  
6 and two crossover SUVs, the X and Y. Tesla plans the return of the Roadster, along with a  
7 “Cybertruck” pickup.

8 17. Driving range is among the most important factors in consumer decisions on  
9 which electric car to buy, or whether to buy one at all. So-called range anxiety – the fear of  
10 running out of power before reaching a charger – has been a primary obstacle to boosting  
11 electric-vehicle sales.

12 18. The Tesla Vehicles provide range estimates in real-time. The intention is to  
13 provide the driver with real-time updates on the electric vehicle battery’s performance, which  
14 directly correlates to the range the vehicle can be driven. Accurate range estimates help to  
15 ensure that, as the battery drains, the driver knows to pull over at a charging station before the  
16 battery drains completely, leaving the driver and occupants stranded. Inaccurate range estimates  
17 can, indeed, lead a driver to being stranded, as the battery drains completely—and unexpectedly,  
18 based upon inaccurate range information.

19 19. Tesla vehicles provide range estimates in two ways. First, through a meter on the  
20 screen that is always displayed. This meter can be toggled to indicate either the electric vehicle  
21 battery percentage remaining or the range (measured in miles or kilometers) remaining. Second,  
22 through the vehicle’s navigation system, which estimates the range (indicated in battery  
23 percentage) remaining, as compared to the set destination. However, if no destination is input  
24 into the navigation system, the vehicle will not indicate a range estimate through this latter  
25 method.

26 20. While Reuters could not determine whether Tesla still uses algorithms that boost  
27 in-dash range estimates, according to Reuters, automotive testers and regulators continue to flag  
28 the company for exaggerating the distance its vehicles can travel before their batteries run out.

1           21.     Following purchase, each Tesla Vehicle sets a suggested charge limit—that is, an  
2 upper limit to stop charging the battery. For example, if an 80% limit is set, the battery will  
3 continue to charge until it reaches 80% capacity, then will stop charging. This effectively  
4 ensures that the battery cannot be fully charged to 100%.

5           22.     A consumer can manually override the charge limit. However, Tesla  
6 recommends that consumers not exceed the suggested charge limit. Tesla specifically suggests  
7 that consumers “[c]harge the battery to the appropriate charge limit for your vehicle based on  
8 the installed battery.”

9           23.     Tesla suggests that Tesla owners should charge their vehicle to full 100%  
10 capacity only sparingly. In fact, Tesla’s chief executive officer, Elon Musk, suggests that  
11 owners should only charge to 90% or 95% when necessary.

12           24.     Setting charge limits directly impacts total range. Tesla’s advertised total range  
13 of its vehicles are based on a full charge. However, because Tesla discourages owners from ever  
14 charging their vehicles to 100%, it is increasingly difficult—if not impossible—to ever reach  
15 that advertised range. For example, setting the vehicle’s charge limit at 80% can reduce the total  
16 range by hundreds of miles, compared to the advertised range. Based upon Tesla’s suggested  
17 charge limits, Tesla vehicles cannot reach the total ranges Tesla advertises. Notably, while  
18 Tesla openly advertises its total range estimates (which already are exaggerated) to consumers at  
19 the point of purchase, it does not indicate to consumers that they can expect to limit the  
20 vehicle’s total range by setting charge limits.

21           25.     Moreover, Tesla exaggerates its Vehicles’ range.

22           26.     Indeed, in 2023, South Korean regulators, cited Tesla for false advertising. The  
23 Korea Fair Trade Commission (KFTC) found that Tesla failed to tell customers that cold  
24 weather can drastically reduce its cars’ range. It cited tests by the country’s environment  
25 ministry that showed Tesla cars lost up to 50.5% of the company’s claimed ranges in cold  
26 weather. The KFTC also flagged certain statements on Tesla’s website, including one that  
27 claimed about a particular model: “You can drive 528 km (328 miles) or longer on a single  
28 charge.” Regulators required Tesla to remove the “or longer” phrase. Korean regulators required

1 Tesla to publicly admit it had misled consumers. Musk and two local executives did so in a June  
2 19 statement, acknowledging “false/exaggerated advertising.” South Korean also regulators  
3 fined Tesla about \$2.1 million for falsely advertised driving ranges on its local website between  
4 August 2019 and December 2022.

5 27. Further, the EPA has required Tesla since the 2020 model year to reduce the  
6 range estimates the automaker wanted to advertise for six of its vehicles by an average of 3%.  
7 The EPA told Reuters, however, that it expects some variation between the results of separate  
8 tests conducted by automakers and the agency.

9 28. Similarly, Reuters reported that data collected in 2022 and 2023 from more than  
10 8,000 Teslas by Recurrent, a Seattle-based EV analytics company, showed that the cars’  
11 dashboard range meters did not change their estimates to reflect hot or cold outside  
12 temperatures, which can greatly reduce range. Recurrent found that Tesla’s four models almost  
13 always calculated that they could travel more than 90% of their advertised EPA range estimates  
14 regardless of external temperatures. Scott Case, Recurrent’s chief executive, told Reuters that  
15 Tesla’s range meters also ignore many other conditions affecting driving distance.

16 29. Electric cars can lose driving range for a lot of the same reasons as gasoline cars  
17 — but to a greater degree. The cold is a particular drag on EVs, slowing the chemical and  
18 physical reactions inside their batteries and requiring a heating system to protect them. Other  
19 drains on the battery include hilly terrain, headwinds, a driver’s lead foot and running the  
20 heating or air-conditioning inside the cabin.

21 30. Tesla vehicles provide range estimates in two ways: One through a dashboard  
22 meter of current range that’s always on, and a second projection through its navigation system,  
23 which works when a driver inputs a specific destination. The navigation system’s range  
24 estimate, Case said, does account for a wider set of conditions, including temperature. While  
25 those estimates are “more realistic,” they still tend to overstate the distance the car can travel  
26 before it needs to be recharged, he said.

27 31. Recurrent tested other automakers’ in-dash range meters – including the Ford  
28 Mustang Mach-E, the Chevrolet Bolt and the Hyundai Kona – and found them to be more

1 accurate. The Kona's range meter generally underestimated the distance the car could travel, the  
2 tests showed. Recurrent conducted the study with the help of a National Science Foundation  
3 grant. Tesla, Case said, has consistently designed the range meters in its cars to deliver  
4 aggressive rather than conservative estimates: "That's where Tesla has taken a different path  
5 from most other automakers."

6 32. Like their gas-powered counterparts, new electric vehicles are required by U.S.  
7 federal law to display a label with fuel-efficiency information. In the case of EVs, this is stated  
8 in miles-per-gallon equivalent (MPGe), allowing consumers to compare them to gasoline or  
9 diesel vehicles. The labels also include estimates of total range: how far an EV can travel on a  
10 full charge, in combined city and highway driving.

11 33. EV makers have a choice in how to calculate a model's range. They can use a  
12 standard EPA formula that converts fuel-economy results from city and highway driving tests to  
13 calculate a total range figure. Or automakers can conduct additional tests to come up with their  
14 own range estimate. The only reason to conduct more tests is to generate a more favorable  
15 estimate, said Gregory Pannone, a retired auto-industry veteran cited by Reuters. Pannone, co-  
16 authored a study of 21 different brands of electric vehicles, published in April 2023 by SAE  
17 International, an engineering organization. The research found that, on average, the cars fell  
18 short of their advertised ranges by 12.5% in highway driving. Pannone told Reuters that three  
19 Tesla models posted the worst performance, falling short of their advertised ranges by an  
20 average of 26%.

21 34. Tesla does not use EPA's standardized formula for any of its Vehicles. Instead,  
22 Tesla conducts its own additional range tests on all of its models, resulting in inflated estimates  
23 compared to the ranges drivers actually experience.

24 35. By contrast, many other automakers, including Ford, Mercedes and Porsche,  
25 continue to rely on the EPA's standardized formula to calculate potential range, according to  
26 agency data for 2023 models. Doing so ensures that the potential range advertised to consumers  
27 reflects more conservative estimates based on real-world driving conditions, Pannone said.  
28

1           36.     Whatever an automaker decides, the EPA must approve the window-sticker  
2 numbers. The agency told Reuters it conducts its own tests on 15% to 20% of new electric  
3 vehicles each year as part of an audit program and has tested six Tesla models since the 2020  
4 model year.

5           37.     EPA data obtained by Reuters through the Freedom of Information Act showed  
6 that the audits resulted in Tesla being required to lower all the cars' estimated ranges by an  
7 average of 3%. The projected range for one vehicle, the 2021 Model Y Long Range AWD (all-  
8 wheel drive), dropped by 5.15%. The EPA said all the changes to Tesla's range estimates were  
9 made before the company used the figures on window stickers.

10          38.     The EPA said it has seen "everything" in its audits of EV manufacturers' range  
11 testing, including low and high estimates from other automakers. "That is what we expect when  
12 we have new manufacturers and new technologies entering the market and why EPA prioritizes"  
13 auditing them, the agency said.

14          39.     The EPA cautioned that individuals' actual experience with vehicle efficiency  
15 might differ from the estimates the agency approves. Independent automotive testers commonly  
16 examine the EPA-approved fuel-efficiency or driving range claims against their own experience  
17 in structured tests or real-world driving. Often, they get different results, as in the case of Tesla  
18 vehicles.

19          40.     Pannone called Tesla "the most aggressive" electric-vehicle manufacturer when  
20 it comes to range calculations. "I'm not suggesting they're cheating," Pannone said of Tesla.  
21 "What they're doing, at least minimally, is leveraging the current procedures more than the  
22 other manufacturers."

23          41.     Jonathan Elfalan, vehicle testing director for the automotive website  
24 Edmunds.com, reached a similar conclusion to Pannone after an extensive examination of  
25 vehicles from Tesla and other major automakers, including Ford, General Motors, Hyundai and  
26 Porsche. All five Tesla models tested by Edmunds failed to achieve their advertised range, the  
27 website reported in February 2021. All but one of 10 other models from other manufacturers  
28 exceeded their advertised range. Tesla complained to Edmunds that the test failed to account



1 for the safety buffer programmed into Tesla’s in-dash range meters. So, Edmunds did further  
2 testing, this time running the vehicles, as Tesla requested, past the point where their range  
3 meters indicated the batteries had run out.

4 42. Only two of six Teslas tested matched their advertised range, Edmunds reported  
5 in March 2021. The tests found no fixed safety buffer. Edmunds has continued to test electric  
6 vehicles, using its own standard method, to see if they meet their advertised range estimates. As  
7 of July, no Tesla vehicle had, Elfalan said. “They’ve gotten really good at exploiting the rule  
8 book and maximizing certain points to work in their favor involving EPA tests,” Elfalan told  
9 Reuters. The practice can “misrepresent what their customers will experience with their  
10 vehicles.”

11 43. Mercedes-Benz told Reuters it uses the EPA’s formula because it believes it  
12 provides a more accurate estimate. “We follow a certification strategy that reflects the real-  
13 world driving behavior of our customers in the best possible way,” the German carmaker said in  
14 a statement quoted by Reuters.

15 44. To address an overwhelming number of customer complaints regarding driving  
16 range and request for service appointments to address the issue, in the summer of 2022, Tesla  
17 created a “Diversion Team” in Los Vegas to handle only range cases, according to the people  
18 familiar with the matter, as cited by Reuters. Diversion Team employees were instructed to  
19 thwart any customers complaining about poor driving range from bringing their vehicles in for  
20 service and to cancel as many range-related appointments as possible.

21 45. The office atmosphere at times resembled that of a telemarketing boiler room. A  
22 supervisor had purchased the metallophone – a xylophone with metal keys – that employees  
23 struck to celebrate appointment cancellations, according to the people familiar with the office’s  
24 operations.

25 46. Advisers would normally run remote diagnostics on customers’ cars and try to  
26 call them, the people said. They were trained to tell customers that the EPA-approved range  
27 estimates were just a prediction, not an actual measurement, and that batteries degrade over  
28 time, which can reduce range. Advisors would offer tips on extending range by changing



1 driving habits. If the remote diagnostics found anything else wrong with the vehicle that was not  
2 related to driving range, advisors were instructed not to tell the customer, one of the sources  
3 said. Managers told them to close the cases.

4 47. Tesla also updated its phone app so that any customer who complained about  
5 range could no longer book service appointments, one of the sources said. Instead, they could  
6 request that someone from Tesla contact them. It often took several days before owners were  
7 contacted because of the large backlog of range complaints, the source said.

8 48. The update routed all U.S. range complaints to the Nevada diversion team, which  
9 started in Las Vegas and later moved to the nearby suburb of Henderson. The team was soon  
10 fielding up to 2,000 cases a week, which sometimes included multiple complaints from  
11 customers frustrated they couldn't book a service appointment, one of the people said.

12 49. The team was expected to close about 750 cases a week. To accomplish that,  
13 office supervisors told advisers to call a customer once and, if there was no answer, to close the  
14 case as unresponsive, the source said. When customers did respond, advisers were told to try to  
15 complete the call in no more than five minutes.

16 50. In late 2022, managers aiming to quickly close cases told advisers to stop  
17 running remote diagnostic tests on the vehicles of owners who had reported range problems,  
18 according to one of the people familiar with the diversion team's operations. "Thousands of  
19 customers were told there is nothing wrong with their car" by advisers who had never run  
20 diagnostics, the person said. Reuters could not establish how long the practice continued.

21 51. Tesla recently stopped using its diversion team in Nevada to handle range-related  
22 complaints, according to the person familiar with the matter. Virtual service advisers in an  
23 office in Utah are now handling range cases, the person said. Reuters could not determine why  
24 the change was made.

25 52. Tesla was aware that its advertised electric vehicle ranges for the Tesla Vehicles  
26 were exaggerated and exceeded the actual range of the vehicle when driven in real-world  
27 driving conditions. Tesla, which employs its own proprietary method for calculating the range  
28 of its electric vehicles, was aware that this method of calculation produced aggressive and

1 exaggerated range estimates. Further, Tesla was aware that various driving and environmental  
2 factors negatively impacted the electric vehicle's range and that these factors were likely to  
3 occur in real-world driving conditions.

4 53. Nevertheless, despite knowing this, Tesla did not inform consumers of this  
5 information when advertising their electric vehicle range estimates. For example, Tesla could  
6 have warned potential purchasers that cold weather would drastically lower the electric  
7 vehicle's range, but Tesla did not issue such a warning, instead only advertising an exaggerated  
8 range estimate.

9 54. Tesla also was aware that its advertised range estimates were based on driving  
10 the electric vehicle with a full 100% charge of the electric vehicle battery. However, because  
11 Tesla suggests to customers that they establish a charge limit on their vehicles well-below full  
12 capacity, Tesla was aware that, in reality, customers would be unable to ever actually experience  
13 the full advertised range.

14 55. Tesla should have warned potential purchasers that the ranges of the Tesla  
15 Vehicles could be negatively impacted by various driving and environmental factors that were  
16 likely to exist; but Tesla did not.

17 56. Tesla should have warned potential purchasers that the ranges of the Tesla  
18 Vehicles were estimated based on full 100% battery charge, but that Tesla suggested that its  
19 model vehicles not be charged to full 100% battery charge on a regular basis.

20 57. Tesla should have warned potential purchasers that the ranges of the Tesla  
21 Vehicles were not estimated based on EPA standardized formulae—despite Tesla advertising  
22 the range estimates as “EPA estimates”—but instead based on Tesla's own proprietary method  
23 and algorithms for calculating range, which allowed for a more aggressive estimate of total  
24 electric vehicle range.

25 58. Tesla's conduct in falsely advertising its estimated vehicle ranges harmed  
26 Plaintiff at the point of sale and continues to harm members of the general public.

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**FIRST CAUSE OF ACTION**

**Violation of California Unfair Competition Law**

**(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

59. Plaintiffs re-allege and incorporate by reference each allegation set forth above.

60. The UCL prohibits “acts of unfair competition,” including “any unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.” Defendant has committed acts of unfair competition proscribed by the UCL, including the acts and practices alleged herein.

61. The UCL imposes strict liability. Plaintiffs need not prove that Defendant intentionally or negligently engaged in unfair and deceptive business practices – only that such practices occurred.

62. Tesla has engaged in unfair competition and unfair and deceptive business practices by the conduct and statements described above, and by knowingly and intentionally misleading Plaintiffs and the public about the true nature of the range of the Tesla Vehicles. Tesla knew or reasonably should have known about the true nature of the vehicle range throughout the relevant period. Tesla should have disclosed accurate and truthful information concerning the vehicle range in its advertising and through its authorized dealerships. Tesla was in a superior position to know the true facts related to the vehicle range, and Plaintiffs and the general public could not reasonably be expected to learn or discover the true facts related to the Tesla Vehicles’ range.

63. These acts and practices have deceived Plaintiffs and are likely to deceive members of the general public.

64. Plaintiffs and members of the general public consider the Tesla vehicles’ driving range to be an important factor (if not the most important factor) when purchasing their Tesla Vehicles. The Vehicles’ advertised range is material to the average, reasonable consumer.

65. The misrepresented facts concerning the vehicle range are also material because they concern central functions of the electric vehicles (*e.g.*, the distance the vehicle can travel before needing to be recharged).

1           66.     Had Tesla disclosed the true vehicle range in its advertising, on its website's  
2 listing of Tesla vehicles for sale or the website's custom order tool, or through its authorized  
3 dealerships, Plaintiffs and other members of the consuming public would have learned of the  
4 true vehicle range and would have acted differently. Had Plaintiffs known about the true state of  
5 facts of the vehicle range capabilities of Tesla vehicles, they would not have purchased their  
6 vehicle or else would have paid substantially less for it. Accordingly, Plaintiffs overpaid for  
7 their Tesla vehicle and did not receive the benefit of their bargain.

8           67.     The injuries suffered by Plaintiffs, and the future injuries that members of the  
9 public will sustain absent public injunctive relief, are greatly outweighed by any potential  
10 countervailing benefit to consumers or to competition, nor are they injuries that Plaintiffs should  
11 have, or could have, reasonably avoided, or members of the public can avoid absent public  
12 injunctive relief.

13           68.     One form of injunctive relief provided under the UCL is "public injunctive  
14 relief." Accordingly, as Defendant's misconduct primarily affects members of the general  
15 public, Plaintiffs seek public injunctive relief for the benefit of the general public.

16           69.     Indeed, by definition, the injunctive relief provided by the UCL has as its  
17 primary purpose and effect of prohibiting unfair and deceptive acts that threaten future injury to  
18 the general public.

19           70.     Further, as alleged above, Plaintiffs seek to enjoin future violations of  
20 California's consumer protection statute, the UCL, which by its very nature is relief oriented to,  
21 and for the benefit of, the general public. An injunction under the UCL is for the benefit of the  
22 general public and is designed to prevent further harm to the public at large. Defendant's  
23 misconduct is continuing, and Plaintiffs' requested relief has the primary purpose and effect of  
24 protecting the public from Defendant's ongoing harm. All members of the public can become  
25 customers of Defendant at some time in the future, and even if they do not, this does not negate  
26 the fact that public injunctive relief will nevertheless offer benefits to the general public.

27           71.     Indeed, Plaintiffs have already been harmed by and are on notice of Tesla's  
28 unfair and deceptive conduct. Accordingly, a public injunction of Tesla's unfair and deceptive

practices will not directly benefit Plaintiffs because they have already been harmed and are already aware of the misconduct, and will have the primary purpose and effect of protecting members of the general public.

72. In addition, the issues and claims alleged herein are matters of significant public interest and are likely to recur. Enjoining Defendant's conduct in violation of the UCL, a California statute intended to protect members of the consuming public, unquestionably is in the public interest.

73. As a direct and proximate result of Defendant's acts and practices in violation of the UCL, Plaintiffs have suffered injury in fact and lost money or property as set forth above.

74. Defendant's acts of unfair competition as set forth above present a continuing threat to the consuming public and will persist and continue to do so unless and until this Court issues appropriate injunctive relief. Plaintiffs also seek attorneys' fees and costs pursuant to, *inter alia*, C.C.P. § 1021.5.

75. Accordingly, public injunctive relief is necessary and appropriate.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, for the benefit of the general public, pray for public injunctive relief, and further pray for relief and judgment against Defendant follows:

1. For an Order requiring that, *inter alia*, Defendant, on a going forward basis, disclose that (1) Tesla's advertised total mileage range for the Tesla Vehicles is based on charging the Vehicle to 100%, but Tesla discourages charging its vehicles to 100%; therefore, Tesla's advertised mileage range for the Tesla Vehicles is misleading; (2) the range of the Tesla Vehicles can drop by up to 50% in cold weather, compared to advertised ranges for the Subject Vehicles; and (3) that the ranges of the Tesla Vehicles were not estimated based on EPA standardized formulae—despite Tesla advertising the range estimates as “EPA estimates”—but instead based on Tesla's own proprietary method for calculating range, which allowed for a more aggressive estimate of total electric vehicle range

2. For an award of attorneys' fees and costs pursuant to California Code of Civil Procedure § 1021.5, or as may otherwise be allowed by law;

Respectfully submitted,

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COMPLAINT